

Summary

There have been dramatic changes in the health care delivery system in recent years, especially in relation to long-term care services. To accurately and appropriately structure regulations to address these changes, a comprehensive analysis of the current and projected long-term care environment must be undertaken. In addition, the current need methodologies for long-term care services are over 15 years old and require significant updating. To accomplish this task, the Department will enlist the aid of an independent consultant. The Department has already engaged such a consultant to examine the need methodology and criteria for specialized long-term care beds for ventilator-dependent residents. This consultant will also study reimbursement mechanisms and non-institutional options for care. The Department will in the future engage consultants to undertake similar tasks regarding general long-term care, pediatric long-term care, and long-term care services for those with severe behavioral problems.

The Department is proposing the readoption of these rules with amendments in order to provide time to complete the above-noted tasks. In the interim, the existing rules with the proposed amendments, as well as the Certificate of Need process rules (N.J.A.C. 8:33), can still be used to review any certificate of need applications for general, pediatric and specialized long-term care beds, should the Commissioner issue a call for such beds. Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 8:33H shall expire on September 12, 2004.

Due to the growth of assisted living facilities and Medicare and Medicaid reimbursement changes, it is not expected that it will be necessary to have a certificate of need call for general long-term care beds in the near future. In fact, nursing facility occupancy has dropped from over 95 percent when the need methodology and criteria contained in the current rules were promulgated to less than 90 percent today.

As noted, the current criteria are approximately 15 years old and no longer reflect the current nursing facility environment. In fact, the general long-term care methodology makes extensive reference to Local Advisory Boards (LABs) and LAB Long Term Care Committees. It is noted that LABs were abolished by revisions to N.J.S.A. 26:2H-1 et seq. in 1998. Additionally, due to changes in statute, three facility types noted in the current rules no longer require certificate of need review (residential health care facilities, hospital-based subacute long-term care units, and alternate family care programs).

Therefore, the Department proposes to readopt these rules with numerous amendments that eliminate references to outdated methodologies and criteria that are no longer used, as well as to facility types that no longer fall under certificate of need review. Throughout the text, the term “patients” is changed to “residents” or “individuals,” as appropriate, to reflect that a long-term care or assisted living facility has become the individual's home.

The rules proposed for readoption include a purpose and scope section (N.J.A.C. 8:33H-1.1) which outlines the Department's commitment to planning for long-term care services (N.J.A.C. 8:33H-1.1(a)); the ongoing promotion of the

goals of quality, access, affordability, and community participation in long-term care services planning (N.J.A.C. 8:33H-1.1(b)); the facility types addressed in the rules, with the proposed elimination of reference to residential health care facilities, alternate family care programs and hospital-based subacute long-term care units, each of which no longer require certificate of need review (N.J.A.C. 8:33H-1.1(c)); reference to the importance of home health and comprehensive rehabilitation services in the continuum of care but with additional language noting that these require separate certificate of need review subject to a call (N.J.A.C. 8:33H-1.1(d) and (e)); notice that the rules apply to all covered facilities regardless of type of ownership (N.J.A.C. 8:33H-1.1(f)); and retention of language without change (N.J.A.C. 8:33H-1.1(g)) indicating that approved certificate of need applicants shall only use approved beds for residents who require the services of that category of care and that prohibits advertising of levels of service different from that approved.

N.J.A.C. 8:33H-1.2 contains definitions of terms used in the rules. The proposed amendments eliminate a number of definitions, which either pertain to a facility type no longer subject to certificate of need review and/or are parts of outdated need methodologies or criteria, which are also proposed for elimination. Thus, the following definitions are proposed for elimination: adult day health care program, AIDS Community Care Alternatives Program, alternate family care, alternate family care program, Community Care Program for the Elderly and Disabled, Local Advisory Board, Long-Term Care Committee, long-term care placement, placement mix proposal, residential health care facility and

subacute care. A new definition of planning regions for pediatric and specialized long term care beds/services is added to replace Local Advisory Board areas, though the actual geographic areas are not changed. However, the definition will permit other regions to be used in certificate of need review so long as that region is defined in the certificate of need call published in the New Jersey Register.

Several definitions have been amended to be consistent with those contained in previous amendments to the Certificate of Need: Application and Review Process rules (N.J.A.C. 8:33). The definition of applicant is amended to permit limited liability partnerships, limited liability corporations, and a State to serve as the licensed operator of a proposed service, facility or equipment and have the overall responsibility for the health care services to be provided. Similarly, the definition of general long term care beds is amended to exclude restrictions imposed by statute to those already imposed by certificate of need approval requirements. Limitations imposed by licensure standards are also noted in the amended definition. Examples of the exclusions are also added to the definition. Finally, the definition of hospice is amended to reflect the fact that the Department now has a separate licensing category for these services and that these hospice services now include medical, nursing, social work and counseling.

N.J.A.C. 8:33H-1.3, Role of counties, Local Advisory Boards, and the State in long-term care planning, is proposed for repeal and the section will be reserved for future use. The section, as currently written, describes a process

for long-term care services planning that is outdated and no longer used. It is noted that this section describes extensive responsibility for Local Advisory Boards, which were abolished by the State Legislature in 1998.

N.J.A.C. 8:33H-1.4, Projection of need for long-term care placements, is proposed for repeal, and the section will be reserved for future use. The section, as currently written, describes a long-term care need methodology that is outdated, has not been used for over ten years, and is no longer reflective of the current long-term care environment.

N.J.A.C. 8:33H-1.5, Pediatric long term, is proposed for readoption. This section contains the methodology for projecting pediatric long-term care bed need. While this methodology will be under review by the Department, it is based on age-specific use rates and population growth and thus, can reasonably be used to project need until further study is completed. Language referencing a “regional need” or “LAB” in N.J.A.C. 8:33H-1.5(b) and (c) is replaced with the new term “planning region,” since LABs no longer exist. In addition, the periodic basis for the surveying of pediatric patients who are medically ready for transfer to a pediatric long-term care facility is changed from two to five years, reflecting the fact that historic demand for these services is relatively stable and pediatric long term care beds and services have been available at existing providers in the past. In addition, the language regarding the need to collaborate with the Department of Human Services on these surveys is being deleted, since the Department of Health and Senior Services, as a result of a Statewide

reorganization, now houses the collaborative programs that were formerly within the Department of Human Services.

N.J.A.C. 8:33H-1.6, Specialized long-term care, is also proposed for readoption. This section addresses ventilator care for adults and care of patients with severe behavior management problems (N.J.A.C. 8:33H-1.6(a)); requires specific certificate of need approval prior to establishing these types of beds (N.J.A.C. 8:33H-1.6(b)); identifies a region as a “LAB region,” changed to “planning region” in the proposal (N.J.A.C.8:33H-1.6(c)); and describes a need methodology for adult ventilator beds (N.J.A.C. 8:33H-1.6(d)). This latter methodology will also be under review by the Department. However, since it is based on existing use rates and adult population growth, it can reasonably be used to project need until further study is completed. Additionally, “LAB region” is changed to “planning region” where appropriate.

N.J.A.C. 8:33H-1.6(e) describes criteria for approving applications for beds to serve patients with severe behavior management problems and indicates the Commissioner shall give consideration to approve one model program for this service in each “LAB region,” with a proposed amendment to change the latter to “planning region.”

Paragraph (e)1 limits the number of beds that can be approved for this service to 32 and requires applicants to demonstrate need by submitting patient-specific data (while protecting an individual’s identity), showing that there is a sufficient number of individuals in the planning region who meet the unit’s proposed admission criteria that would fill 85 percent of the requested beds.

Paragraph (e)2 requires the facility to develop and maintain a collaborative affiliation with at least one school of nursing which grants baccalaureate and/or master's degrees in nursing, one school of social work, and one medical school.

Paragraph (e)3 requires the model program to have a formal research and program evaluation component. It also requires the applicant to describe how patient care outcomes will be evaluated by an independent party or organization and to submit evaluation reports to the Department within three years of licensure. Finally, it requires an identification of funding sources for this research since Medicaid does not reimburse for such expenses.

Paragraph (e)4 requires an application for this service to include admission and discharge criteria which assure that the most difficult to manage patients will receive priority admission.

Paragraph (e)5 requires the application to include a plan to assure continuity of care for patients discharged from the program. It also requires the facility in which the specialized care program is offered to at all times have beds available in other nursing units within the facility to permit the transfer of residents who no longer require specialized care. Finally, this paragraph requires the applicant to specify how other nursing homes in the region will be involved in continuity of care.

Paragraph (e)6 requires the approved facility to develop and maintain an ongoing program whereby designated staff are available to offer training, seminars and technical assistance in the care of residents with severe behavior problems to other facilities in the planning area.

Paragraph (e)7 requires the approved facility to conduct multidisciplinary team meetings in order to establish and review each resident's plan of care. This team must include staff members involved in direct resident care and the team must promote innovative approaches to caring for residents with severe behavior management problems.

Paragraph (e)8 requires the facility to have a medical director with expertise in the care of those with behavior management problems.

N.J.A.C. 8:33H-1.6(f) requires a facility approved to provide specialized care beds to have a distinct and separate unit for such beds.

N.J.A.C. 8:33H-1.6(g) requires all applicants for specialized care to provide: a detailed description of services and programs of care to be offered, specific admission and discharge criteria for the unit, a plan for in-service training and orientation of staff, a description of physical plant considerations and special architectural features of the specialized unit, a signed transfer agreement with at least one 200 bed hospital within 30 minutes of the specialized care unit, and a specific plan for continuity of care for discharged specialized care residents.

N.J.A.C. 8:33H-1.6(h) requires that specialized care units treating ventilator dependent residents maintain the 24 hour per day presence of at least one registered nurse on the unit and the 24 hour per day on-call availability of at least one respiratory therapist.

N.J.A.C. 8:33H-1.6(i) states that the minimum desired occupancy rate for specialized care units is 85 percent.

N.J.A.C. 8:33H-1.6(j) indicates that in cases of competing applications for specialized long-term care beds, the prioritization criteria in N.J.A.C. 8:33H-1.19(e) shall be used in determining which applications should be approved and denied.

N.J.A.C. 8:33H-1.7 contains criteria regarding assisted living residences and assisted living programs. N.J.A.C. 8:33H-1.7(a) indicates that assisted living residences fall under expedited certificate of need review and, upon approval, must comply with applicable licensing standards in N.J.A.C. 8:36. N.J.A.C. 8:33H-1.7(b) indicates that an assisted living program is also subject to expedited certificate of need review; that each office site of a program may provide services in an area that covers no more than two contiguous counties; that an applicant may establish and license sufficient sites to provide services in multiple counties, up to and including a Statewide service area; and that an approved program must comply with applicable licensing standards in N.J.A.C. 8:36; 8:33H-1.7(c) requires applicants for assisted living residences or programs to undergo a track record review in accordance with the requirements in N.J.A.C. 8:33H-1.14. N.J.A.C. 8:33H-1.7(d) requires that applications submitted subsequent to the time that Medicaid reimbursement for assisted living residences becomes generally available beyond the limited number of slots authorized under the Department's Medicaid waiver to include a statement of commitment to provide access and continuity of care for Medicaid-eligible residents, including former psychiatric patients, who need nursing home level care.

In accordance with N.J.S.A. 26:2H-12.16, a new subsection (e) is added requiring an assisted living residence licensed on or after August 31, 2001 (the effective date of the statutory amendment) to reserve 10 percent of its total bed complement for Medicaid-eligible persons. Paragraph (e)1, in conformance with the statute, indicates that the 10 percent requirement may be met by persons who originally entered the facility as private pay residents who subsequently become Medicaid-eligible or by persons who enter the facility already Medicaid-eligible. Paragraph (e)2 requires that this 10 percent utilization be achieved within three years of licensure and maintained thereafter.

Also in conformance with the statutory amendment, a new subsection (f) is added requiring existing assisted living facilities adding beds to maintain 10 percent of the additional licensed beds for use by Medicaid-eligible persons. The 10 percent may be met through Medicaid conversions or direct admit Medicaid persons. Paragraph (f)1 requires at least one of the additional beds to be reserved for a Medicaid-eligible person whenever the total number of additional beds is less than 10. Paragraph (f)2 requires that this 10 percent Medicaid utilization be achieved within three years of licensure of the additional beds and maintained thereafter. Paragraph (f)3 defines Medicaid-eligible person as those admitted to the facility as private paying patients and subsequently become eligible for Medicaid, and persons who were admitted directly to the facility as Medicaid-eligible. Paragraph (f)4 permits waivers to these Medicaid utilization requirements if it is determined there is no need to require them. It also requires the waiver of these requirements if there is a limitation on funding

to pay for services. Paragraph (f)5 indicates that these Medicaid utilization requirements do not apply to beds operated by a continuing care retirement community.

N.J.A.C. 8:33H-1.8, pertaining to Hospital-based subacute long-term care units, is proposed for repeal since such units no longer require certificate of need review. The section will be reserved.

N.J.A.C. 8:33H-1.9, Size and occupancy of nursing homes and nursing units, is proposed for readoption. N.J.A.C. 8:33H-1.9(a) states that the target annual occupancy rate for nursing homes should be 90 percent. N.J.A.C. 8:33H-1.9(a)1 indicates that any certificate of need application proposing the addition of long-term care beds with an annual occupancy rate of less than 90 percent shall not be approved. N.J.A.C. 8:33H-1.9(b) requires that nursing homes be designed and sized to promote a homelike environment, efficient facility operation, and a high quality of life and care. N.J.A.C. 8:33H-1.9(c) requires that an application for long-term care beds state the number of beds proposed for each nursing unit and limits the size of each nursing unit to a maximum of 64 beds. N.J.A.C. 8:33H-1.9(d) requires each applicant to provide documentation that each proposed nursing unit with long-term care beds, regardless of size, shall be staffed with at least one licensed nurse (a registered nurse or a licensed practical nurse) for each shift and that there also should be at least two nursing personnel assigned to each nursing unit for each shift. It also requires the facility to meet all other staffing requirements in N.J.A.C. 8:39 and to document that the operation of the facility will be financially feasible so

staffed. N.J.A.C. 8:33H-1.9(d)1 requires, as a condition of certificate of need approval, that the applicant agree to comply with the staffing standards in subsection (d) even if this means exceeding the minimum staffing standards in the Standards for Licensure of Long Term Care Facilities, N.J.A.C. 8:39.

N.J.A.C. 8:33H-1.9(e) states that the maximum size of facilities receiving certificate of need approval for general and specialized long-term care beds shall be 240 beds. Paragraph (e)1 permits a waiver to the 240-bed maximum where an existing facility already licensed for more than 240 beds also proposed to reduce its licensed beds by at least 15 percent, so long as all other applicable requirements of this chapter are met. Paragraph (e)2 also permits an exception to the 240-bed maximum for a statewide restricted admission facility provided that it meets the requirements for such facilities in N.J.A.C. 8:33H-1.11 and all other applicable provisions of this chapter. N.J.A.C. 8:33H-1.9(f) permits a facility which is licensed for 24 or more long-term care beds to receive certificate of need approval for additional beds provided that the applicant designs the project to result in two or more separately licensed and staffed facilities, each in compliance with the 240 bed maximum size. Additionally, the language in this subsection permitting a facility licensed for more than 240 beds to be considered for certificate of need approval for a construction or renovation project without adding beds is proposed for deletion since such projects, without a bed addition, no longer require certificate of need review. N.J.A.C. 8:33H-1.9(g) states that the maximum unit size for specialized long-term care beds is 32.

N.J.A.C. 8:33H-1.10, regarding comprehensive personal care homes, is proposed for readoption with amendments. N.J.A.C. 8:33H-1.10(a) states that in order to provide residents of Residential Health Care Facilities and Class C Boarding Homes the opportunity to age in place, these facility types may apply to convert to a comprehensive personal care home. N.J.A.C. 8:33H-1.10(b) states that applications to convert to a comprehensive personal care home will be under the expedited review process. N.J.A.C. 8:33H-1.10(c) presents the eligibility criteria for construction of new comprehensive personal care home beds. Paragraph (c)1 notes that existing comprehensive personal care homes and existing facilities proposing conversion to such homes may, within any five year period, add a maximum of 20 new beds. Paragraph (c)2 notes that a hospice program, certified by Medicare for at least 12 consecutive months, may construct up to 20 new beds provided all are occupied exclusively by residents eligible for hospice services. N.J.A.C. 8:33H-1.10(d) states that applicants for comprehensive personal care home beds shall be subject to the track record review requirements in N.J.A.C. 8:33H-1.14. N.J.A.C. 8:33H-1.10(e) requires that applications submitted subsequent to the time that Medicaid reimbursement for comprehensive personal care homes becomes generally available beyond the limited number of slots authorized under the Department's Medicaid waiver to include a statement of commitment to provide access and continuity of care for Medicaid-eligible residents, including former psychiatric patients, who need nursing home level care. N.J.A.C. 8:33H-1.10(f) requires that a residential health care facility or a Class C boarding home, when converting to a

comprehensive personal care home, maintain its existing residents who are Supplemental Security Income-eligible recipients and former psychiatric patients. It further requires that on an ongoing, annual basis, at least five percent of the facility's residents shall be Supplemental Security Income-eligible recipients, at least half of whom shall be former psychiatric patients. This percentage is to be computed based on the number of resident days per calendar and is to be reported to the Department by April 15 of each year for the previous calendar years. Paragraph (f)1 requires that in the event that the facility's Supplemental Security Income-eligible residents develop the need for nursing home level care, the facility shall maintain these residents in accordance with the licensing standards at N.J.A.C. 8:36, subject to the facility's discharge criteria in accordance with N.J.A.C. 8:36-4.1(d), provided that Medicaid reimbursement is available. If such reimbursement is not available, the facility shall make all necessary arrangements to transfer the person to a nursing home. Paragraph (f)2 states that in the event that the Supplemental Security Income (SSI) payment rate for Comprehensive Personal Care Homes is set at a level below the SSI payment rate for Residential health Care Facilities, the five percent occupancy requirement for SSI-eligible residents in subsection (f) shall not take effect. However, Comprehensive Personal Care Homes shall maintain their existing residents who are Supplemental Security Income-eligible, as also required in subsection (f).

In accordance with N.J.S.A. 26:2H-12.16, a new subsection (g) is added requiring a comprehensive personal care home licensed on or after

August 31, 2001 (the effective date of the statutory amendment) to reserve 10 percent of its total bed complement for Medicaid-eligible persons. Paragraph (g)1, in conformance with the statute, indicates that the 10 percent requirement may be met by persons who originally entered the facility as private pay residents who subsequently became Medicaid-eligible or by persons who enter the facility already Medicaid-eligible: Paragraph (g)2 requires that this 10 percent utilization be achieved within three years of licensure and be maintained thereafter.

Also in conformance with the statutory amendment, a new subsection (h) is added requiring existing comprehensive personal care homes adding beds to maintain 10 percent of the additional licensed beds for use by Medicaid-eligible persons. The 10 percent may be met through Medicaid conversions or direct admit Medicaid persons. Paragraph (h)1 requires at least one of the additional beds to be reserved for a Medicaid-eligible person whenever the total number of additional beds is less than 10. Paragraph (h)2 requires that this 10 percent Medicaid utilization be achieved within three years of licensure of the additional beds and maintained thereafter. Paragraph (h)3 defines Medicaid-eligible person as those admitted to the facility as private paying patients and subsequently become eligible for Medicaid, and persons who were admitted directly to the facility as Medicaid-eligible. Paragraph (h)4 permits waivers to these Medicaid utilization requirements if it is determined there is no need to require them. It also requires the waiver of these requirements if there is a limitation on funding to pay for services. Paragraph (h)5 indicates that these

Medicaid utilization requirements do not apply to beds operated by a continuing care retirement community.

N.J.A.C. 8:33H-1.11, regarding Statewide restricted admission facilities, is proposed for readoption. N.J.A.C. 8:33H-1.11(a) requires that an applicant proposing a new or expanded nursing home which meets the definition of a restricted admission facility in N.J.A.C. 8:33H-1.2 shall state this fact in the application and shall provide the documentation required in paragraphs (a)1 and 2. The former requires that the facility's bylaws explicitly state that only members of the specified religious or fraternal organization and their immediate family members will be admitted to 100 percent of the long-term care beds; and the latter requires that at least 50 percent of the facility's residents are from outside the planning region in which the facility is located. N.J.A.C. 8:33H-1.11(b) permits a restricted admissions facility to file an application under the expedited review process. N.J.A.C. 8:33H-1.11(c) requires the application to contain a detailed resident origin breakdown of the facility's current population, identifying the county (or state, for out-of-State residents) of prior residence for each resident, as well as anyone on the facility's waiting list. N.J.A.C. 8:33H-1.11(d) requires that the facility shall agree to meet the applicable utilization criteria for Medicaid, SSI, and discharged psychiatric patients, as stated in N.J.A.C. 8:33H-1.15. It also requires that facilities which do not participate in the Medicaid Program to document how they will subsidize the care of residents who are Medicaid-eligible.

N.J.A.C. 8:33H-1.12, regarding residential health care facilities, is proposed for repeal since such facilities are no longer subject to certificate of need requirements. The section will be reserved.

N.J.A.C. 8:33H-1.13, regarding conversion or elimination of licensed or certificate of need-approved beds or services, is proposed for readoption with amendments. N.J.A.C. 8:33H-1.13(a) requires an applicant proposing to convert licensed beds to submit schematic plans with a floor layout of the facility to illustrate how the proposed conversion will be accomplished. In order to assure that all applicable building codes are met, the subsection also recommends that applicants consult with the Health Care Plan Review Program at the Department of Community Affairs. A proposed amendment to this subsection makes clear that conversion to a use subject to the review schedule in N.J.A.C. 8:33-4.1(a) shall be subject to the schedule and procedures described therein; N.J.A.C. 8:33H-1.13(b) requires applicants for the conversion of residential health care beds to long-term care beds to document a commitment to enabling current residents to continue to occupy their assigned beds until or unless a permanent relocation placement is requested by the applicant. An amendment to this subsection is also proposed which clarifies that the conversion of residential health care beds to long-term care beds must follow the schedule and procedures in N.J.A.C. 8:33-4.1(a). Paragraph (b)1 permits mixing of residential health care and long-term care beds within one or more units as a consequence of implementing a Certificate of Need to convert or eliminate beds when necessary to avoid relocating or discharging residents who do not wish to move.

N.J.A.C. 8:33H-1.13(c) requires that where a project entails the discharge or permanent relocation of patients in order to convert or eliminate licensed beds, the applicant must provide compelling documentation that a greater public benefit is obtained from the proposed conversion or elimination of beds than would be obtained if the existing licensed bed complement were maintained. This documentation must be submitted by applicants proposing to discharge or relocate a specified number of residents upon receiving certificate of need approval, as well any applicant for bed conversion or elimination who has discharged or relocated more than 25 percent of the residents of the beds in question during the 12 months prior to application submission. Documentation of a public benefit may include, but not be limited to: letters supporting the discharge or relocation of residents which are submitted by the residents, family members or significant others, and/or the residents' health care providers (paragraph (c)1); evidence that residents' quality of life and/or care would deteriorate if permitted to remain in the facility or would improve if relocated to another facility (paragraph (c)2); evidence that the quality of life and/or care of those residents who will remain as residents in the facility would either deteriorate unless the proposed beds are converted or eliminated or substantially improve as a result of eliminating or converting the beds in question (paragraph (c)3); and evidence that the relocation will provide residents' families convenient access for visitation purposes (paragraph (c)4). N.J.S.A. 8:33H-1.13(d) provides an exception to the documentation requirement specified in N.J.A.C. 8:33H-1.13(c) where the facility is to be permanently closed. N.J.A.C.

8:33H-1.13(e) is proposed for elimination as obsolete and unnecessary. The Department believes that all facilities eligible for conversion of residential health care beds to long-term care beds have already done so.

The current N.J.A.C. 8:33H-1.13(f) is recodified as (e) and an amendment is proposed clarifying that applications proposing the conversion of residential health care beds to long-term care beds are subject to the schedule and procedures in N.J.A.C. 8:33-4.1(a). The remainder of recodified subsection (e) is unchanged. Paragraph (e)1 requires that if the project entails the relocation of residents, the applicant must provide documentation of a transfer agreement with at least one other residential health care facility in the area which maintains admission policies, offers amenities, and charges fees which are similar to those of the applicant's residential health care facility. Further, this applicant must provide documentation that the facility which is the subject of the transfer agreement has the willingness and bed capacity to accommodate those residents who might be transferred from the applicant's facility, including Supplemental Security Income recipients and discharged psychiatric patients. Paragraph (e)2 requires that if the applicant's facility currently has residents who may require or desire relocation, the applicant must agree to provide all necessary social service assistance to implement the relocation in a way that maximizes consumer choice of placement alternatives. Additionally, the applicant must bear the cost of relocation. Paragraph (e)3 requires the applicant to also comply with all other applicable requirements of the chapter.

N.J.A.C. 8:33H-1.13(g) is recodified as (f). It permits consideration for approval of the conversion of specialized long-term care beds to general use or to another category of specialized care if certain conditions are met: Paragraph (f)1 requires an applicant for such conversion to provide evidence that good faith efforts have been made to implement the existing specialized unit for a period of 18 months prior to the conversion application. Subparagraph (f)1i through iv present types of evidence. Subparagraph (f)1i includes records of efforts to establish appropriate referral sources and transfer agreements. Subparagraph (f)1ii includes records of efforts to negotiate reimbursement rates with third party payors, including Medicaid. Subparagraph (f)1iii includes a confidential listing of all residents referred for admission over the 12-month period prior to application submission. For each of these, the applicant shall indicate whether the person was admitted to the special care unit, and if not, why not and the name of the facility where the person was ultimately placed. Subparagraph (f)1iv includes a description of all efforts to recruit and train staff for the unit. Amended language is added at N.J.A.C. 8:33H-1.13(f)2 clarifying that the conversion of specialized long-term care beds to either general long-term care or another type of specialized care, are subject to the schedule and procedures in N.J.A.C. 8:33-4.1(a).

N.J.A.C. 8:33H-1.13(h) is recodified as (g) and contains criteria for the conversion of acute care hospital beds to general or specialized long-term care beds. Paragraph (g)1 requires that the planning region, not just county, has a documented bed need, although reference to N.J.A.C. 8:33H-1.4 and a county

Long Term Care Placement Committee is deleted. Paragraph (g)2 requires that the proposed project entail the permanent conversion of beds. Paragraph (g)3 requires the applicant to document plans for a home-like environment or have admission policies limiting admissions to those whose stays are likely to be less than 100 days. Paragraph (g)4 requires that the capital cost of converting the acute care beds be less than new nursing home construction. Paragraph (g)5 requires the application to comply with all other applicable requirements in this chapter and, as a proposed addition, N.J.A.C. 8:33-4.1(a).

N.J.A.C. 8:33H-1.14, regarding quality of care and licensure track record requirements, is proposed for readoption. A change in the section heading is proposed deleting residential health care facilities, since they no longer require certificate of need review. Assisted living programs are proposed for addition to the heading. N.J.A.C. 8:33H-1.14(a) requires the licensure track record of an applicant to be evaluated by the Department in accordance with criteria set forth in N.J.A.C. 8:33. The specific provision of the latter, N.J.A.C. 8:33-4.10(d), is added.

N.J.A.C. 8:33H-1.15, regarding utilization requirements for Medicaid-eligible persons, Supplemental Security Income (SSI) recipients, and former psychiatric patients, is proposed for readoption. The term Supplemental Security Income recipients in the section heading is proposed for deletion since it applies only to residential health care facilities which no longer require certificate of need review. N.J.A.C. 8:33H-1.15(a) includes specific utilization requirements for certificate of need applicants proposing new or additional beds.

Paragraph (a)1 requires that within one year of licensure, a minimum of 36 percent of the total general long-term care bed complement be occupied by direct admit Medicaid-eligible residents and that this 36 percent requirement must be maintained annually thereafter. Paragraph (a)2 requires this same 36 percent requirement for specialized long-term care beds. Paragraph (a)3 requires that a minimum of 45 percent of the total general long-term care bed complement be occupied by Medicaid-eligible residents who have either spent down to the level of Medicaid eligibility during their nursing home stay or who are direct admit Medicaid eligibles. The paragraph requires this 45 percent occupancy to be met by the end of the first year of licensure and continually thereafter. Paragraph (a)4 requires this same 45 percent requirement for specialized long-term care beds. Paragraph (a)5 requires that seven percent of the total number of long-term care beds be available for occupancy by persons in need of nursing home care who are present or former patients of a State or county psychiatric hospital or community hospital psychiatric units.

Subparagraph (a)5i indicates that beds occupied by former psychiatric patients may count toward the utilization requirements for Medicaid eligible residents noted above, so long as the former psychiatric patient is Medicaid eligible.

Subparagraph (a)5ii requires that at the time of licensure of any long-term care bed approved in accordance with this chapter, the nursing home shall sign and subsequently maintain a written transfer agreement with the Division of Mental Health Services of the Department of Human Services or at least one county

psychiatric hospital or a facility with a community inpatient psychiatric unit in order to comply with the seven percent requirement.

N.J.A.C. 8:33H-1.15(b) is proposed for deletion since it covers residential health care facilities which no longer require certificate of need review; thus, the current N.J.A.C. 8:33H-1.15(c) is recodified as (b) and requires that any nursing home approved for a change in scope to comply with the Medicaid utilization requirements in the original certificate of need approval letter or the requirements in this chapter, whichever are higher. References to SSI recipients and change in cost are proposed for deletion from this subsection: the former is used only in reference to residential health care facilities, which no longer require certificate of need review, and the latter also no longer requires certificate of need review. N.J.A.C. 8:33H-1.15(d) is recodified as (c) and permits an applicant to request a review of the various utilization requirements and attempt to document that complying with these requirements will cause a financial hardship. Reference to a change in cost is proposed for deletion since it no longer requires review in the certificate of need process.

N.J.A.C. 8:33H-1.16, regarding cost-efficiency and financial flexibility, is proposed for readoption. N.J.A.C. 8:33H-1.16(a) requires applicants to demonstrate the financial feasibility of their projects, based upon the projection of reasonable private pay and Medicaid charges, expenses of operation and staffing patterns in relation to other facilities in the planning region. The latter term is proposed to replace the term “health systems area” which is obsolete and no longer used. N.J.A.C. 8:33H-1.16(b) requires that total project cost,

construction cost per square foot and cost per bed be taken into account in the review of applications. N.J.A.C. 8:33H-1.16(c) requires that if projected construction and operating costs in a certificate of need application are considerably higher or lower than the average for the planning region (a term replacing health systems area, as noted above), the applicant must provide an explanation indicating the factors that are causing this. N.J.A.C. 8:33H-1.16(d) requires applicants to describe their previous track record of implementing other long-term care projects and indicate whether changes in cost were requested. The subsection further notes that, all other things being equal, preference in approving projects will be granted to applicants with a history of realistic cost projections. N.J.A.C. 8:33H-1.16(e) requires applicants to provide evidence in their financial projections that income generated from operations will be sufficient to provide care to the percentage of Medicaid-eligible or indigent residents specified in their application or N.J.A.C. 8:33H-1.15, whichever is greater. N.J.A.C. 8:33H-1.16(f) requires all applicants to verify at least 10 percent of the total project cost in the form of equity. N.J.A.C. 8:33H-1.16(g) requires applicants to make efforts to obtain the least cost financing available. N.J.A.C. 8:33H-1.16(h) requires applicants proposing to add long-term care beds to an existing or replacement facility to provide documentation that the added beds will improve the efficient operation of the facility, reducing unit costs of care per resident.

N.J.A.C. 8:33H-1.17, regarding environmental and physical plant considerations, is proposed for readoption. N.J.A.C. 8:33H-1.17(a) requires

facilities to be designed and constructed in a manner that eliminates architectural barriers to care. N.J.A.C. 8:33H-1.17(b) requires applicants to consult with the Department of Community Affairs' Health Care Plan Review Program regarding the design and construction of their projects. In addition, this subsection requires at paragraph (b)1 that specialized care units for ventilator care shall have piped-in oxygen, suction equipment, emergency electrical outlets and additional square footage for ventilator equipment and supplies; paragraph (b)2 requires that pediatric nursing units include a play or recreation room and suitable space for educational use; and paragraph (b)3 requires that specialized care units for those with severe behavior management problems provide easy access to a protected outdoor area.

N.J.A.C. 8:33H-1.18, regarding location of facilities, is proposed for readoption. N.J.A.C. 8:33H-1.18(a) requires that the applicant describe the site of the project, how it is currently zoned and provide a timetable for securing any zoning and land use approvals. It also prohibits the approval of construction of new or replacement facilities on sites currently zoned for heavy industrial use. Paragraph (a)1 recommends that applicants not enter into costly land use or zoning approval procedures prior to receiving certificate of need approval. N.J.A.C. 8:33H-1.18(b) requires the applicant to identify the proposed facility's access to public transportation and indicates that, where possible, a facility shall be located where it has access to low cost public transportation. N.J.A.C. 8:33H-1.18(c) requires the applicant for a new facility to describe the availability of utilities to the proposed site and where utilities are not already available to

provide a timetable and costs for obtaining them. N.J.A.C. 8:33H-1.18(d) requires the applicant to identify the facility's proximity to any potential source of adverse environmental conditions and requires facilities to be located so as to prevent exposure of residents to adverse environmental conditions.

N.J.A.C. 8:33H-1.19, regarding prioritization criteria and recommended features for the approval of nursing home projects, is proposed for readoption. N.J.A.C. 8:33H-1.19(a) indicates that in the case of competing applications to meet a limited bed need, these applications will be reviewed using the prioritization criteria contained herein. N.J.A.C. 8:33H-1.19(b) presents a number of prioritization criteria and indicates that each is worth one point, except the first two, which are each worth two points as follows:

Paragraph (b)1 requires an applicant to document a commitment to occupy 55 percent or more of the facility's total long-term care bed complement with Medicaid-eligible residents within one year of licensure. This proportion shall include at least 45 percent occupancy of the total bed complement by direct admission Medicaid-eligible residents and at least 10 percent occupancy by residents who convert from private pay status to Medicaid eligibility during their stay in the facility. No greater priority is provided if an applicant proposes higher percentages than those noted.

Paragraph (b)2 requires an applicant to document a commitment to admit and maintain Medicaid-eligible "heavy care" or acuity residents in at least 20 percent of the proposed new beds. "Heavy care" is described as residents who do not require specialized care as defined in N.J.A.C. 8:33H-1.2, but who

routinely require more than the 2.5 hours per day minimum amount of nursing care required in N.J.A.C. 8:39, the Standards for Licensure of Long Term Care Facilities. To comply with this criterion, the applicant must provide documentation from area hospital discharge planners or other appropriate resources to show that there is a need of the magnitude that would warrant 20 percent of the proposed beds being dedicated for heavy care.

Paragraph (b)3 requires an applicant to document a track record of consistently high quality of care by demonstrating a satisfactory record of compliance with licensure standards during the three year period prior to application submission.

Paragraph (b)4 requires an applicant to operate at least one facility licensed for both long-term care and residential health care beds and has maintained at least an 85 percent occupancy in the residential health care beds during the most recent calendar year.

Paragraph (b)5 requires the facility to include a separate and distinct unit for young adult residents.

Paragraph (b)6 requires that within one year of licensing, the facility be staffed with one or more full-time equivalent physicians or clinical nurse specialists who have received a master's degree in geriatric nursing or a related clinical field from a program accredited by the National League for Nursing.

Paragraph (b)7 requires the facility to provide and document a tuition reimbursement and/or career ladder program for staff.

Paragraph (b)8 provides a priority if the project will result in the elimination of life safety code waivers at an existing facility.

Paragraph (b)9 provides a priority if the project entails the conversion of excess hospital beds to long-term care.

Paragraph (b)10 provides a priority if the applicant has a track record of timely implementation of long-term care construction projects, defined as projects licensed within four years of certificate of need issuance.

Paragraph (b)11 provides a priority if the applicant has no more than one other Certificate of Need approved but unlicensed long-term care facility in New Jersey at the time a current application is accepted for processing.

Paragraph (b)12 provides a priority to applicants who have achieved substantial compliance with five or more advisory standards contained in N.J.A.C. 8:39. Substantial compliance is defined as compliance with at least 65 percent of the components of each of the five advisory standards. Advisory standards which are taken into consideration for purposes of this subsection are: access to care, resident assessment and care plans, pharmacy, infection control and sanitation, resident activities, dietary services, medical services, nurse staffing, physical environment and quality assurance.

Paragraph (b)13 requires an applicant to document the provision of high quality of life for residents. Factors deemed to promote a high quality of life are: subparagraph (b)13i requires physical space inside the facility to exceed minimum construction requirements, designed for residents to meet privately with family and significant others; subparagraph (b)13ii requires a year-round

access to protected and landscaped outdoor areas that are furnished with outdoor seating and tables; and subparagraph (b)13iii requires the applicant to develop strategies to address the needs of residents with Alzheimer's Disease and related dementia.

N.J.A.C. 8:33H-1.19(c) specifies that if an applicant receives Certificate of Need approval and proposed to meet any of the prioritization criteria noted above, these criteria will be included as conditions of approval and failure to comply may result in licensure fines or other penalties. N.J.A.C. 8:33H-1.19(d) requires the applicant to document that the costs of complying with any prioritization criteria to which a commitment has been made have been factored into the financial flexibility analysis. N.J.A.C. 8:33H-1.19(e) specifies the additional prioritization criteria for approval of applications for specialized long-term care beds. Paragraph (e)1 requires the facility to be centrally located in a location conveniently reached by public and private transportation by residents from all parts of the planning region (the latter term replaces LAB region since LABs no longer exist). Paragraph (e)2 provides a priority for a facility that can readily accommodate additional specialized care beds should there be a future need. Paragraph (e)3 requires the facility to commit to occupying 55 percent or more of the specialized care bed complement with Medicaid-eligible residents within one year of licensure. This proportion must include at least 45 percent occupancy of direct admission Medicaid-eligible residents and at least 10 percent occupancy by residents who convert to Medicaid from private pay. No

greater priority is given to an applicant who proposes to exceed these percentages.

N.J.A.C. 8:33H-1.20, regarding the relationship between licensure and certificate of need requirements, is proposed for readoption with amendments that delete reference to the facility types that no longer require certificate of need review: residential health care facilities and alternate family care sponsor agencies. The section now states that applicants receiving certificate of need approval for long-term care, assisted living residence and/or comprehensive personal care home beds or as an assisted living program must comply with all applicable licensing requirements for these types of beds and services.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments would maintain the expedited review status of assisted living residences (ALRs), assisted living programs (ALPs) and comprehensive personal care homes (CPCH), thereby continuing the Department's effort to facilitate the development of a more diverse array of high quality long-term care options, greater consumer choice and an improved quality of life for those who need long-term care.

As assisted living facilities and services have come on-line, it is clear that they are proving to be desirable and effective alternatives to traditional long-term

care services. Thus, the rules proposed for readoption with amendments and repeals continue to maintain the full certificate of need review requirements for the more traditional long-term care option of nursing homes. As the impact of ALRs, ALPs, and CPCHs becomes more accurately assessed, nursing home bed need will likely require adjustment accordingly and the Department will move to address this issue. In the interim, failure to maintain this chapter would likely have a pronounced negative effect on those individuals with developing long-term care needs.

The rules proposed for readoption with amendments and repeals also maintain the full review requirement for specialized and pediatric long-term care services. While the effect of alternative care options on these services is likely to be less pronounced, as noted above, the need methodologies for these services are out of date and need to be re-evaluated. Continuation of the current rules while appropriate need methodologies are being developed is necessary to assure continuing access to high quality care to patients in need of these specialized services. Also, as noted, the Department has already retained a consultant to assist in examining needs for and alternatives to traditional specialized long-term care beds for ventilator-dependent residents.

The readoption of these rules with the amendments and repeals will, therefore, provide consumers with a continuum of long-term care options while assuring the quality of, and access to, more traditional services until more appropriate and up-to-date options are developed.

Economic Impact

The rules proposed for readoption with amendments and repeals will have no economic impact on consumers, providers or the Department, for the various types of assisted living facilities and for specialized long-term care. While the complex and obsolete need methodology for general long-term care beds is eliminated, the success of the assisted living option makes it unlikely a certificate of need call for this type of bed will be needed prior to the complete reevaluation of the methodology to be undertaken by the Department. However, even should a need for additional general long-term care beds be documented prior to the completion of the Department's reevaluation, a call can still be issued and applicants reviewed under the statutory need criteria in N.J.S.A. 26:2H-8, along with all other criteria and requirements remaining in these rules. In such an event, since the statutory need criteria are less complex than those currently in regulation, applicants should have a lesser burden in developing applications.

As far as the cost of compliance with these rules is concerned in the event of a certificate of need (CN) call, that cost would be reflected in the cost of the application process which would be \$7,500 plus .25 percent of the total project cost of each potential new or expanded long-term care facility. Other developmental costs might be incurred should there be a need for professional assistance (for example, architectural, planning, legal) in the preparation of a CN application. Such costs are a relatively small fraction of typical project costs. It is important to note, however, that these costs would only be incurred by

potential long term care providers if a call for conventional or specialized long term care beds and services is issued.

These potential costs to industry providers, however, can only be characterized as negligible in contrast to the system cost savings and benefits that will accrue from these rules' continued emphasis on the creation of lower cost alternatives to conventional nursing homes (that is, assisted living facilities, comprehensive personal care homes) that provide consumers with more affordable options. The rules also assure quality of care by limiting entry to those potential providers who have demonstrated a record of strict compliance with stringent New Jersey licensure standards as well as out-of-State compliance, if applicable.

It is also noted that residential health care and alternate family care were removed from certificate of need review by legislative actions in 1998.

Failure to readopt these rules may result in a proliferation of nursing facilities, resulting in increased costs to Medicaid, the primary payer of these services.

Federal Standards Statement

The rules proposed for readoption with amendments and repeals do not impose standards on health care providers in New Jersey that exceed those contained in Federal law or regulation (see 42 U.S.C. §§1395 et seq.). There are no direct Federal regulatory requirements for these alternative services or for expansion of capacity in nursing facilities.

Jobs Impact

The rules proposed for readoption with amendments and repeals are not expected to have either a negative or positive impact on jobs in New Jersey, including the generation or loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments and repeals will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

This chapter governs the certificate of need process for long-term care facilities including nursing homes, pediatric and specialized long-term care services, continuing care retirement communities, statewide restricted admissions facilities, assisted living residences and programs and comprehensive personal care home. While many of these types of facilities employ over 100 persons full-time and, therefore, do not qualify as “small businesses” under the Regulatory Flexibility Act, many have less than 100 employees and, therefore are defined as “small businesses” under that Act. Compliance requirements are described in the Summary above, and costs of compliance in the Economic Impact above.

These rules pertain to the certificate of need application process and planning procedures and, accordingly, contain planning formulae. They are necessary to assure appropriate patient/resident placement while maintaining

maximum utilization to realize the full extent of attendant economies of scale. Accordingly, there is necessarily no differentiation in these rules based upon business size.

The certificate of need application process will cause service providers to incur administrative costs; other economic impact, including professional services, as discussed in the Economic Impact above. Finally, it must be noted that due to the current state of change among long-term care alternatives, the Department anticipates that at least some of the businesses which employ under 100 individuals at present will eventually grow larger and no longer be considered “small businesses” in the near future.

Smart Growth Impact

The rules proposed for adoption with amendments and repeals will have no impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:33H.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 8:33H-1.3, 1.4, 1.8 and 1.12.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets **[thus]**):

8:33H-1.1 Purpose; scope

(a) (No change.)

(b) The Department has a major responsibility for the promotion of high quality, efficiently and economically rendered health services which are available to all citizens of the State. To ensure significant progress toward the achievement of this goal, the Department should direct planning and Certificate of Need activities toward the following:

1.-2. (No change.)

3. Expansion of **both general and specialized** long-term care options to maximize consumer choice;

4.-9. (No change.)

(c) The rules contained in this chapter address the Certificate of need requirements for the following categories and types of facilities, as they are defined in N.J.A.C. 8:33H-1.2:

1.-5. (No change.)

6. Assisted living programs; **and**

7. Statewide restricted admissions facilities[;] .

[8. Residential health care facilities;

9. Alternate family care programs; and

10. Hospital-based subacute long term care units.]

(d) Home health care is recognized as an important component of the long-term care system; however, the Certificate of Need requirements for home health care agencies are not contained in this chapter. Applicants interested in offering home health services in New Jersey should refer to N.J.A.C. [8:33L]

8:33-4.1(a). However, applications for this service will only be accepted in

response to a call issued by the Department and published in the New Jersey Register.

(e) Some patients in nursing homes may, on occasion, require rehabilitative care. The rehabilitative services offered to patients in most nursing homes are distinguished from comprehensive rehabilitation, which may only be offered by a licensed rehabilitation hospital. Applicants interested in offering comprehensive rehabilitation should refer to N.J.A.C. 8:33M **and 8:33-4.1(a).**

However, applications for this service will only be accepted in response to a call issued by the Department and published in the New Jersey Register.

(f) (No change.)

(g) Where a Certificate of Need is granted for long-term care beds, the applicant shall agree to occupy those beds with [patients] **residents** who require general nursing home care or, if so designated in the letter of approval, specialized long-term care. Applicants approved for long-term care beds shall not admit [patients] **residents** who require a different licensing category of care, such as comprehensive rehabilitation, unless the Commissioner has determined that admission is warranted to respond to an emergency situation and has granted approval in writing.

1. (No change.)

8:33H-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

["Adult day health care program" means a facility which is licensed by the Department of Health to provide preventive, diagnostic, therapeutic, and rehabilitative services under medical supervision to meet the needs of functionally impaired adult patients. Adult day health care facilities provide services to patients for a period of time which does not exceed 12 hours during any calendar day.]

...

["AIDS Community Care Alternatives Program" or "ACCAP" means a Medicaid Federal waiver program which offers all Medicaid services plus special home and community-based services, including case management, to persons who are financially eligible and diagnosed as having AIDS. At a minimum, the person must meet the nursing facility level of care criteria and be maintained in the community at a cost that is no greater than the cost to Medicaid for institutional care.

"Alternate family care" means a contractual arrangement whereby no more than three persons receive room, board, personal care, and other health care services from and in the home of an unrelated individual who has been approved by a sponsor agency and trained to provide the necessary care giving.

"Alternate family care program" means a program operated by a community-based agency, institution, facility, or private entity which is responsible for recruiting, screening, training, and supervising alternate family caregivers, as well as matching clients with alternate family caregivers and monitoring client status within this arrangement.]

"Applicant" means an individual, a partnership, **a limited liability partnership**, a corporation (including associations [,] **and** joint-stock companies, [and insurance companies]) **a limited liability corporation, a State**, or a political subdivision (including a [county or] municipal corporation) [that submits a Certificate of Need application] **of a State that will be the licensed operator of the proposed service, facility or equipment, which will have overall responsibility for the health care service to be provided.**

...

"Commissioner" means the [New Jersey] State Commissioner of Health and Senior Services.

["Community Care Program for the Elderly and Disabled" or "CCPED" means a Medicaid-funded, Federally waived program offering all Medicaid services plus special home and community-based services, including case management to persons who meet specific medical and financial nursing facility eligibility criteria. At a minimum, the person must meet the nursing facility level of care criteria and be maintained in the community at a cost that is no greater than the cost to Medicaid for institutional care.]

...

"General long-term care bed" means a long-term care bed for which there is no restriction imposed by **statute (for example, subacute long-term care)**, certificate of need approval requirements **(for example, pediatric long-term care, specialized long-term ventilator care, specialized long-term care of residents with severe behavior management problems)** or stipulations

and/or licensure standards that would limit the type of nursing home [care] **resident** who may occupy the bed or the type of nursing home care which may be provided to the occupant of the bed.

"Hospice" means a program [of] **which is licensed by the New Jersey State Department of Health and Senior Services to provide** palliative [and supportive] services [provided] to terminally ill persons [and their families in the form of physical, psychological, social, and spiritual care] **in the person's home or place of residence, including medical, nursing, social work, volunteer and counseling services.**

...

["Local Advisory Board" or "LAB" means a regional health planning agency designated by the Department to make assessments and recommendations regarding the health needs within a specified geographical area. Local Advisory Board areas are as follows:

1. LAB region I: Morris, Sussex, Passaic, Hunterdon, Mercer, Middlesex, Somerset and Warren Counties;
2. LAB region 11: Bergen, Essex, Union and Hudson Counties; and
3. LAB region III: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Monmouth, Ocean and Salem Counties.]

...

["Long-Term Care Committee" or "Committee" means a county-based group of volunteers which is designated by the Local Advisory Board for the purpose of identifying and addressing the county's service coordination issues,

access problems, and public education needs pertaining to long-term care. In counties where there is a need for additional long-term care placements, the Committee has responsibility for formulating a placement mix proposal.

"Long-term care placement" means a unit of service provided to an individual requiring long-term care. The unit may be a bed, for example, a nursing home bed, or a slot, for example, an adult day health care slot.】

...

["Placement mix proposal" means a proposal formulated by a county Long-Term Care Committee specifying the number and types of long-term care placements which should be developed in order to meet the future needs of county residents.】

...

“Planning regions for pediatric and specialized long term care beds/services,” unless otherwise specifically defined in the certificate of need call published in the New Jersey Register, means the counties in the following three regions:

- 1. Region 1: Morris, Sussex, Passaic, Hunterdon, Mercer, Middlesex, Somerset and Warren Counties;**
- 2. Region 2: Bergen, Essex, Union and Hudson Counties;**
- 3. Region 3: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Monmouth, Ocean and Salem Counties.**

["Residential health care facility" means a facility which provides food, shelter, supervised health care and related services to four or more persons 18 years of age or older who are unrelated to the owner or administrator.]

"Specialized [care" or "specialized] long-term care" means a program of care provided in licensed long-term care beds for [patients] **residents** who require technically complex treatment with life supporting equipment [,] or who have serious problems accessing appropriate nursing home care due to [their special] **the specialized** treatment [requirements as dictated] **required** by their medical diagnoses and level of functional limitation.

...

["Subacute care" in an acute care general hospital means a comprehensive in-patient program for patients who have had an acute illness, injury or exacerbation of a disease process, have a determined course of treatment prescribed, and do not require intensive diagnostic or intensive invasive procedures, but the patient's condition requires physician direction, intensive nursing care, frequent recurrent patient assessment and review of the clinical course and treatment plan for a period of time, significant use of ancillary medical services and an interdisciplinary approach using professional teams of physicians, nurses and other relevant professional disciplines to deliver complex clinical interventions.]

8:33H-1. 3 and 1.4 (Reserved)

8:33H-1.5 Pediatric long-term care

(a) (No change.)

(b) Because there are so few children who require nursing facility placement in New Jersey, pediatric long-term care units should be planned and developed to serve a [regional need. For this purpose, the region shall be a Local Advisory Board region] **planning region as defined in N.J.A.C. 8:33H-1.2.**

(c) The need for pediatric long-term care beds shall be determined in the following manner:

1. On a periodic basis (that is, at least once every [two] **five** years), the Department [, in collaboration with the Department of Human Services,] shall conduct a survey of acute care hospitals, special hospitals, and other health care facilities at a particular point in time to identify all children who are medically ready for discharge and who require transfer to a pediatric long-term care facility. In addition, the number of children who are known to have been placed in long-term care facilities outside of New Jersey shall be counted;

2. The number of pediatric patients computed in (c)1 above shall be grouped according to their county and [LAB] **planning** region of origin;

3. The projected rate of growth in the population under age 20 in each [LAB] **planning** region shall be calculated using the most recent New Jersey Department of Labor population projections, covering the five year period from the time a Certificate of Need application is accepted for processing up to the target year. The number of patients in each [LAB] **planning** region requiring

pediatric long-term care shall then be adjusted (that is, multiplied) by the aforementioned, region-specific population growth rate. The latter product shall then be added to the number of patients requiring pediatric long-term care in the [LAB] **planning** region;

4. The projected number of pediatric long-term care [patients] **residents** in each **planning** region requiring care as derived in (c)3 above, shall then be adjusted (that is, divided by a factor of .85) to allow for a projected occupancy rate of at least 85 percent.

8:33H-1.6 Specialized long-term care

(a) For the purposes of this chapter, specialized long-term care shall include the following categories:

1. (No change.)
2. Care of [patients] **residents** with severe behavior management problems, such as combative, aggressive, and disruptive behaviors.

(b) A Certificate of Need shall be required for the establishment of a new specialized care program, including the conversion of general long-term care beds for specialized care use, or for the expansion of an existing specialized care program. The Certificate of Need applicant shall identify the type of specialized care [patients] **residents** who will be admitted to the proposed nursing facility beds in accordance with the categories identified in (a) above. Specialized care beds shall be dedicated for exclusive use by the type or types of specialized care [patients] **residents** identified in the approval letter.

1. Certificate of Need approval shall be required in the event that an applicant intends to occupy specialized care beds with ~~[patients]~~ **residents** who do not require specialized care or ~~[patients]~~ **residents** who do not require the type of specialized care which was identified in the applicant's Certificate of Need. An application for the conversion of specialized care beds for some other use shall comply with the requirements in N.J.A.C. 8:33H-1.13~~[(g)]~~ **(f)**.

(c) Specialized care beds shall be approved to meet a ~~[regional]~~ need **in a planning region as defined in N.J.A.C. 8:33H-1.2**. The applicant shall ~~[identify the Local Advisory Board region to be served as defined in N.J.A.C. 8:33H-1.2 and shall]~~ document how access to the unit's services shall be assured for residents throughout the **planning** region.

(d) The number of new beds needed in each ~~[LAB]~~ **planning** region for long-term ventilator care shall be determined in the following manner:

1. On a periodic basis (that is, at least once every ~~[two]~~ **five** years), the Department shall conduct a survey of acute care hospitals, special hospitals, and other health care facilities at a particular point in time to identify all patients who are medically ready for discharge and who are in need of transfer to a facility that provides long-term ventilator care;

2. Through the survey, the number of patients shall be counted for each ~~[LAB]~~ **planning** region;

3. The projected rate of growth in the population age 20 and over in each regional health systems area shall be calculated using the most recent New Jersey Department of Labor population projections, covering the four-year

period from the time a Certificate of Need application is accepted for processing up to the target year. The number of patients in each [LAB] **planning** region requiring ventilator care, as identified through the survey, shall then be adjusted (that is, multiplied) by the aforementioned, region-specific adult population growth rate. The latter product shall then be added to the number of patients in the regional service area requiring each type of specialized care:

Number of Patients Requiring Ventilator Care, Per Survey	X	Region-Specific Growth Rate, Population Age 20+	+	Number of Patients Requiring Ventilator Care, Per Survey;
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4. The projected number of patients in each **planning** region requiring ventilator care as derived in (d)3 above, shall then be adjusted (that is, divided by a factor of .85) to allow for a projected occupancy rate of at least 85 percent, in accordance with (i) below.

(e) A formal methodology shall not be used to determine the number of beds needed for the specialized care of [patients] **residents** with severe behavior management problems. However, in the interest of promoting improved access to high quality care for these [patients] **residents** whose needs cannot safely and effectively be met in general long-term care facilities, the Commissioner shall give consideration to approving one model program in each [LAB] **planning** region. Model programs may be approved providing that the following requirements are met, in addition to all other applicable requirements of this chapter:

1. The applicant shall document to the satisfaction of the Department that the number of beds proposed is reasonable with respect to the need for

specialized long-term care for [patients] **residents** with severe behavior management problems in the [LAB] **planning** region. However, no more than 32 beds in any one nursing home in each [LAB] **planning** region shall be approved for a model program. Protecting individuals' identities, the applicant shall provide [patient] **resident**-specific data to demonstrate that there is a sufficient number of individuals residing in the [regional service area] **planning region** who could meet the model program's admission criteria at the time of application submission, in order to fill 85 percent of the proposed number of beds in the model program. [Patient] **Resident** specific data shall include each individual's age, sex, county of residence, diagnoses, functional impairments, current placement, and reasons why the current placement is inappropriate;

2. – 3. (No change.)

4. The application shall include admission and discharge criteria which assure that the most difficult-to-manage [patients] **residents** in the regional service area shall receive priority for placement in the model program;

5. The application shall include a detailed plan describing how continuity of care will be assured for [patients] **residents** who are admitted to and discharged from the model program. The facility in which the model program will be located shall have available at all times a reasonable number of beds in other nursing units within the facility in order to allow for the transfer of [patients] **residents** who are no longer in need of specialized care as it is offered in the model program. Furthermore, the applicant shall specify how other nursing homes throughout the **planning** region shall be involved in assuring continuity of care

for [patients] **residents** who are admitted to and discharged from the model program;

6. The facility shall develop and maintain an ongoing program whereby designated staff members are available to offer other area health care facilities in the [regional service] **planning** area training, educational seminars, and technical assistance in the care of [patients] **residents** with severe behavior management problems;

7. The model program shall conduct multidisciplinary team meetings on a regular basis for the purpose of establishing and reviewing each [patient's] **resident's** plan of care; the multidisciplinary team shall include staff members involved in direct [patient] **resident** care on the unit, such as physicians, nurses, social workers, psychologists, activities therapists, and so forth. The certificate of need application shall document how the multidisciplinary team will promote innovative approaches to care for [patients] **residents** with severe behavior management problems; and

8. The special care unit shall have a medical director with demonstrated expertise in the care of adult [patients] **residents** with behavior management problems.

(f) The establishment, addition, or conversion of beds for either types of specialized care shall be approved only in those cases where the facility will have one or more distinct and separate nursing units which treat exclusively [patients] **residents** who require the type of specialized care for which the facility receives Certificate of Need approval.

(g) All applicants for specialized care beds shall provide the following, to the satisfaction of the Department:

1. (No change.)
2. Specific admission and discharge criteria for the proposed unit, which clearly identify the types of [patients] **residents** who will be treated in the specialized care beds;
3. A specific plan to provide in-service training for nursing staff and others who will work with specialized care [patients] **residents**, including an orientation program for new staff members, ongoing in-service education, and opportunities to pursue advanced education and certification in the appropriate clinical specialties;
4. A description of physical plant considerations and special architectural features of the proposed unit as well as an identification of any special equipment that will be installed in order to accommodate [patients'] **residents'** needs;
5. A signed transfer agreement with at least one acute care hospital with a licensed capacity of at least 200 beds to which specialized care [patients] **residents** can be transferred within 30 minutes total travel time for the purpose of receiving emergency medical treatment, if the proposed specialized care unit will not be located within an acute care hospital. The applicant shall submit documentation of the reasons why a particular hospital was chosen for the transfer agreement, including a description of the hospital's resources and

capability to address the needs of patients requiring the applicable type of specialized care; and

6. A specific plan to provide coordination and continuity of care for [patients] **residents** who may be discharged from the proposed specialized care beds when this is feasible and beneficial to the patient/family/significant other. Supporting documentation for the plan may include signed transfer agreements or referral arrangements with licensed home health agencies and other health care facilities in the nursing home's regional service area which maintain the resources and capability to offer follow-up specialized care.

(h) In the case of specialized care units proposing to treat ventilator dependent [patients] **residents**, the facility shall provide staffing for the nursing unit on which the ventilator beds are located that includes the 24 hour per day presence on the unit of at least one registered nurse and the 24 hour per day on-call availability of at least one respiratory therapist. In addition, the facility shall comply with licensure staffing requirements that are applicable to the care of ventilator-dependent [patients] **residents**.

(i) – (j) (No change.)

8:33H-1.7 Assisted living residences and assisted living programs

(a) – (d) (No change.)

(e) In accordance with N.J.S.A. 26:2H-12.16, a new facility that is licensed to operate as an assisted living residence on or after August 31,

2001, shall reserve 10 percent of its total bed complement for use by Medicaid-eligible persons.

1. The 10 percent utilization by Medicaid-eligible persons shall be met through Medicaid conversion of persons who enter the assisted living residence as private paying persons and subsequently become eligible for Medicaid, or through direct admission of Medicaid-eligible persons.

2. An assisted living residence shall achieve this 10 percent Medicaid utilization within three years of licensure to operate and shall maintain this level of Medicaid utilization thereafter.

(f) Existing assisted living residences that add additional assisted living beds shall be required, as a condition of licensure approval, to maintain 10 percent of the additional licensed beds for Medicaid-eligible persons through Medicaid conversion of persons who enter the assisted living residence as private paying persons and subsequently become eligible for Medicaid, or through direct admission of Medicaid-eligible persons.

1. If the total number of additional beds is less than 10, at least one of the additional beds shall be reserved for a Medicaid-eligible person.

2. An assisted living residence shall achieve this 10 percent Medicaid utilization in the additional beds within three years of licensure to operate these beds and shall maintain this level of Medicaid utilization thereafter.

3. For the purposes of this subsection, "Medicaid-eligible person" means an individual who has been determined as satisfying the financial

eligibility criteria for medical assistance under the Medicaid program, has been assessed as being in need of nursing facility level of care as specified at N.J.A.C. 10:63-2.1, and has been approved by the Department for participation in the Federally approved Enhanced Community Options waiver program for assisted living services. "Medicaid-eligible person" includes.

i. Persons who were admitted to the facility as private paying residents and subsequently became eligible for Medicaid; and

ii. Persons who were admitted directly to the facility as Medicaid-eligible.

4. The Commissioner or his or her designee may waive or reduce this 10 percent Medicaid occupancy requirement for some or all regions of the State if it is determined that sufficient numbers of licensed beds are available in the State to meet the needs of Medicaid-eligible persons within the limits of the Federally approved Enhanced Community Options waiver as it pertains to assisted living services.

i. The Commissioner or his or her designee shall waive this 10 percent Medicaid occupancy requirement if limitations on funding result in the Department establishing a waiting list for Medicaid-eligible persons requesting assisted living services through the Enhanced Community Options waiver.

ii. A licensed assisted living residence may submit a written request for a waiver of the 10 percent Medicaid occupancy requirement in accordance with N.J.A.C. 8:36-2.7.

5. In accordance with N.J.S.A. 26:2H-12.16 et seq., this subsection shall not apply to an assisted living residence operated by a continuing care retirement community (CCRC), as defined at N.J.A.C. 8:36-1.3.

8:33H-1.8 (Reserved)

8:33H-1.9 Size and occupancy of nursing homes and nursing units

(a) – (e) (No change.)

(f) A facility which is licensed for more than 240 general and/or specialized long-term care beds, which proposes to add long-term care beds, may receive Certificate of Need approval provided that the applicant designs the project to result in two or more separately licensed and staffed facilities, each in compliance with the maximum size requirement in (e) above. [However, a facility which is licensed for more than 240 general and/or specialized long-term beds which proposes a replacement or renovation project without adding beds may be considered for Certificate of Need approval, provided that it complies with all other applicable requirements of this chapter.]

(g) (No change.)

8:33H-1.10 Comprehensive personal care homes

(a) – (b) (No change.)

(c) Eligibility for the construction of new comprehensive personal care beds shall be open exclusively to the following:

1. (No change.)

2. Hospice programs which have been Medicare-certified for at least 12 consecutive months.

i. As a condition of Certificate of Need approval, the facility shall be occupied exclusively by [patients] **residents** who are eligible for hospice services in accordance with 42 C.F.R. 418 of the Medicare Hospice Manual.

(d) (No change.)

(e) Certificate of Need applications submitted subsequent to the time that Medicaid reimbursement for comprehensive personal care homes becomes generally available beyond the limited number of slots authorized under the current Medicaid waiver to section 1915(c) of the Social Security Act, 42 U.S.C. § 1396n, shall include a statement of commitment to provide access and continuity of care for Medicaid-eligible [patients] **residents**, including former psychiatric patients, who need nursing home level care.

(f) (No change.)

(g) In accordance with N.J.S.A. 26:2H-12.16, a new facility licensed to operate as a comprehensive personal care home on or after August 31, 2001, shall reserve 10 percent of its total bed complement for use by Medicaid-eligible persons.

1. The 10 percent utilization by Medicaid-eligible persons shall be met through Medicaid conversion of persons who enter the comprehensive personal care home as private paying persons and subsequently become eligible for Medicaid, or through direct admission of Medicaid-eligible persons.

2. A comprehensive personal care home shall achieve this 10 percent Medicaid utilization within three years of licensure to operate and shall maintain this level of Medicaid utilization thereafter.

(h) Existing comprehensive personal care homes that add additional assisted living beds shall maintain, as a condition of licensure approval, where such approval was given on or after August 31, 2001, 10 percent of the additional beds for Medicaid-eligible persons through Medicaid conversion of persons who enter the comprehensive personal care home as private paying persons and subsequently become eligible for Medicaid, or through direct admission of Medicaid-eligible persons.

1. If the total number of additional beds is less than 10, at least one of the additional beds shall be reserved for a Medicaid-eligible person.

2. A comprehensive personal care home shall achieve this 10 percent Medicaid utilization in the additional beds within three years of licensure to operate the beds and shall maintain this level of Medicaid utilization thereafter.

3. For the purposes of this subsection, "Medicaid-eligible person" means an individual who has been determined as satisfying the financial

eligibility criteria for medical assistance under the Medicaid program, has been assessed as being in need of nursing facility level of care as specified at N.J.A.C. 10:63-2.1, and has been approved by the Department for participation in the Federally approved Enhanced Community Options waiver program for assisted living services. “Medicaid-eligible person” includes:

- i. Persons who were admitted to the facility as private paying residents and subsequently became eligible for Medicaid; and
- ii. Persons who were admitted directly to the facility as Medicaid-eligible;

4. The Commissioner or his or her designee may waive or reduce this 10 percent Medicaid occupancy requirement for some or all regions of the State if it is determined that sufficient numbers of licensed beds are available in the State to meet the needs of Medicaid-eligible persons within the limits of the Federally approved Enhanced Community Options waiver as it pertains to assisted living services.

i. The Commissioner or his or her designee shall waive this 10 percent Medicaid occupancy requirement if limitations on funding result in the Department establishing a waiting list for Medicaid-eligible persons requesting assisted living services through the Enhanced Community Options waiver.

ii. A comprehensive personal care home may submit a written request for a waiver of the 10 percent Medicaid occupancy requirement in accordance with N.J.A.C. 8:36-2.7.

5. In accordance with N.J.S.A. 26:2H-12.16 et seq., this subsection shall not apply to a comprehensive personal care home operated by a continuing care retirement community (CCRC), as defined at N.J.A.C. 8:36-1.3.

8:33H-1.11 Statewide restricted admissions facilities

(a) An applicant proposing a new or expanded nursing home which meets the definition of a restricted admissions facility in N.J.A.C. 8:33H-1.2 shall state this fact in the Certificate of Need application and shall provide documentation that the following criteria are met:

1. (No change.)
2. At least 50 percent of the facility's [patients] **residents** are from outside the [LAB] **planning** region in which the facility is located.

(b) An applicant proposing a new or expanded restricted admissions facility [shall be exempt from the need methodology in N.J.A.C. 8:33H-1.4 and the county-based planning process in N.J.A.C. 8:33H-1.3, and] may submit a Certificate of Need application for expedited review, in accordance with the applicable provisions of N.J.A.C. 8:33.

(c) An applicant proposing a long-term care bed addition to an existing restricted admissions facility shall provide a detailed [patient] **resident** origin

breakdown of the facility's current [patient] **resident** population. The applicant shall identify the county (or State, for out-of-State [patients] **residents**) of prior residence for each [patient] **resident**, as well as for any [patients] **persons** on the facility's admission waiting list.

(d) The applicant for a Statewide restricted admissions facility shall agree to meet the applicable utilization criteria for Medicaid, SSI, and discharged psychiatric patients, as stated in N.J.A.C. 8:33H-1.15. Facilities that do not participate in the State's Medicaid program shall document how they will subsidize the care of [patients] **residents** who are Medicaid-eligible.

8:33H-1.12 (Reserved)

8:33H-1.13 Conversion or elimination of licensed or Certificate of Need approved beds or services

(a) Applicants proposing to convert any licensed beds shall submit schematic plans with a floor layout of the facility, illustrating how the proposed conversion will be accomplished. In order to assure that the bed conversion can be implemented in accordance with health facility construction standards, it is recommended that applicants consult with the Department of Community Affairs, Health Care Plan Review Program, prior to submitting a certificate of need application. Applications for bed conversions **to a use subject to the review schedule in N.J.A.C. 8:33-4.1(a) shall be subject to that schedule and**

procedures described therein. Such applications that are submitted without schematic plans shall be deemed incomplete.

(b) Applicants for the conversion of residential health care beds to long-term care beds **shall follow the schedule and procedures in N.J.A.C. 8:33-4.1(a) and** shall document a commitment to enabling current residents to continue occupying their assigned beds until or unless a permanent relocation placement is requested by the resident.

1. (No change.)

(c) An applicant whose project entails the discharge or permanent relocation of [patients] **residents** in order to effect the conversion or elimination of licensed beds shall provide compelling documentation, to the satisfaction of the Commissioner, that a greater public benefit is to be obtained from the proposed conversion or elimination of beds than would be obtained if the existing licensed bed complement were maintained. This documentation shall be submitted not only by applicants who propose to discharge or permanently relocate a specified number of [patients] **residents** upon receiving Certificate of Need approval, but also by any applicant who has discharged or relocated more than 25 percent of the residents of the beds in question during the 12-month period prior to submission of the Certificate of Need application for a bed conversion or elimination. Compelling documentation of public benefit may include, but shall not be limited to, the following:

1. Letters supporting the discharge or relocation of [patients] **residents** which are submitted by the [patients] **residents** themselves, their family

members or significant others, and/or the [patients'] **residents**' health care providers;

2. Evidence that [patients'] **residents**' quality of life and/or care would either deteriorate if they were permitted to remain in the facility, or that it would improve as a result of their being discharged or relocated to other facilities;

3. Evidence that the quality of life and/or care of those [patients] **residents** who will remain as residents in the facility would either deteriorate unless the proposed beds are converted or eliminated, or substantially improve as a result of eliminating or converting the beds in question; and

4. Evidence that the relocation will afford [patients'] **residents**' family members and significant others convenient access for visitation purposes; that is, the facility to which most [patients] **residents** are expected to be relocated shall be situated in an area that has readily available public transportation and/or easy access to major roadways.

(d) (No change.)

[(e) Certificate of Need applications proposing the conversion of residential health care beds to long-term care beds may be approved provided that the county in which the applicant's facility is located has a documented nursing home bed need in accordance with N.J.A.C. 8:33H-1.3(g) and consistent with the county Long-Term Care Committee's placement mix proposal.

1. Long-term care facilities located in Newark, Jersey City, Paterson, Atlantic City, Camden, Elizabeth, Trenton, Irvington, East Orange or Union City that were issued a certificate of need between January 20, 1987 and

September 8, 1992 pursuant to the methodology contained in then existing N.J.A.C. 8:33H-3.3(b)3 may apply under the expedited review process to convert existing, on-site, licensed residential health care beds to long-term care beds as long as the residential health care beds were licensed on or before August 17, 1998.

2. Any CN application submitted pursuant to (e)l above and approved by the Commissioner shall be subject to the following conditions:

i. The facility shall maintain a minimum of 50 percent bed occupancy by direct Medicaid-eligible patients, of which 10 percent shall be discharged psychiatric patients from State and county hospitals. The aforesaid 50 percent and 10 percent bed minimums shall be calculated using the entire licensed bed capacity for the facility, shall be achieved no later than one year from approval, and shall be maintained at all times thereafter.

ii. The conversion of residential health care beds to long-term care beds shall occur within the long-term care facility and the applicant and/or any successive owner shall not relocate all or any portion of the facility's total licensed long-term care capacity outside of the city limits.]

[(f)] **(e)** Certificate of Need applications proposing the conversion of residential health care beds to long-term care beds **shall be subject to the schedule and procedures in N.J.A.C. 8:33-4.1(a)** and shall meet the following requirements:

1. If the project entails the relocation of [patients] **residents** from the facility, the applicant shall provide documentation of a transfer agreement with at

least one other residential health care facility in the area that maintains admission policies, offers amenities, and charges fees which are similar to those of the applicant's residential health care facility. Furthermore, the applicant shall provide documentation that the residential health care facility which is the subject of the transfer agreement has the willingness and bed capacity to accommodate those **[patients] residents** who might be transferred from the applicant's facility, including Supplemental Security Income recipients and discharged psychiatric patients;

2. If the applicant's facility currently has **[patients] residents** occupying residential health care beds who may require or desire relocation, the applicant agrees to provide all necessary social service assistance to effect the relocation in a manner that maximizes consumer choice of placement alternatives. The applicant shall bear the cost of relocating **[patients] residents** as necessary and shall make arrangements for any residential health care resident at the facility who wishes to visit other residential health care facilities in the area, prior to making a relocation decision; and

3. (No change.)

[(g)] (f) The conversion of specialized care beds to general long-term care beds or to another specialized care use may be considered for approval, provided that the following conditions are met:

1. The applicant provides evidence, to the satisfaction of the Department, that good faith efforts have been made to implement the existing specialized care unit as it was originally approved, for a period of at least 18 months prior to

submission of the Certificate of Need application for conversion. Evidence shall include:

i.- iii. (No change.)

iv. A description of all efforts to recruit and train staff for the unit[.]; **and**

2. The application shall be subject to the schedule and procedures in N.J.A.C. 8:33-4.1(a).

[(h)] **(g)** A Certificate of Need application proposing the conversion of acute care hospital beds to general or specialized long-term care beds may be approved provided that the following conditions are met:

1. The county in which the hospital is located has a documented nursing home bed [need in accordance with N.J.A.C. 8:33H-1.3(g) and consistent with the county Long-Term Care Committee's placement mix proposal].

2. – 4. (No change.)

5. The Certificate of Need application complies with all other applicable requirements in this chapter **and the schedule and procedures in N.J.A.C. 8:33-4.1(a).**

8:33H-1.14 Quality of care and licensure track record requirements for long-term care, assisted living residences, programs, and comprehensive personal care homes[, and residential health care facilities]

(a) The licensure "track record" of an applicant shall be evaluated by the Department to determine whether the applicant's proposed project may be

approved. The criteria for this examination are set forth at N.J.A.C. 8:33-
4.10(d).

**8-33H-1.15 Utilization requirements for Medicaid-eligible [patients,
Supplemental Security Income (SSI) recipients,] residents
and former psychiatric patients**

(a) Applicants receiving certificate of need approval to add general or specialized long-term care beds to an existing facility or to construct a new nursing home or a replacement facility shall comply with the following utilization requirements:

1. Within one year from license issuance, a minimum of 36 percent of the total general long-term care bed complement shall be occupied by direct admission Medicaid-eligible [patients] residents, as defined in N.J.A.C. 8:33H-1.2. The facility shall continue to maintain at least 36 percent Medicaid-eligible direct admissions in its general long-term care beds annually thereafter.

2. Within one year from license issuance, a minimum of 36 percent of the total specialized long-term care bed complement shall be occupied by direct admission Medicaid-eligible [patients] residents, as defined in N.J.A.C. 8:33H-1.2. The facility shall continue to maintain at least 36 percent Medicaid-eligible direct admissions in its specialized long-term care beds annually thereafter.

3. A minimum of 45 percent of the total general long-term care bed complement shall be occupied by Medicaid-eligible [patients] residents who either have spent down to the level of Medicaid eligibility during their nursing

home stay or who are directly admitted to the facility as Medicaid-eligible [patients] **residents**, as defined in N.J.A.C. 8:33H-1.2. The facility shall meet this 45 percent overall occupancy by Medicaid-eligible [patients] **residents** in its general long-term care beds by the end of the first year of licensure and continue meeting this percentage thereafter.

4. A minimum of 45 percent of the total specialized long-term care bed complement shall be occupied by Medicaid-eligible [patients] **residents** who either have spent down to the level of Medicaid eligibility during their nursing home stay or who are directly admitted to the facility as Medicaid-eligible [patients] **residents**, as defined in N.J.A.C. 8:33H-1.2. The facility shall meet this 45 percent overall occupancy by Medicaid-eligible patients in its specialized long-term care beds by the end of the first year of licensure and continue meeting this percentage thereafter.

5. As a condition of certificate of need approval, seven percent of the total number of long-term care beds shall be available for occupancy by persons in need of nursing home care who are present or former patients of State/county psychiatric hospitals or community inpatient psychiatric units.

i. Occupancy of beds by former psychiatric patients who are Medicaid-eligible may count toward the utilization requirements for Medicaid-eligible [patients] **residents** which are specified in (a) above, provided that the former psychiatric [patient] **resident** is Medicaid-eligible.

ii. (No change.)

[(b) Applicants receiving certificate of need approval to add residential health care beds to an existing facility or to construct a new residential health care facility or a replacement facility shall comply with the following utilization requirements:

1. A minimum of 10 percent of the total residential health care bed complement shall be occupied by direct admission Supplemental Security Income eligible recipients. This percentage shall be achieved within one year of license issuance and maintained on an annual basis thereafter.

2. A minimum of 50 percent of the Supplemental Security Income eligible recipient beds shall be dedicated for occupancy by persons in need of residential health care who are State, County, or designated psychiatric short-term care facility patients.

i. Occupancy of beds by former psychiatric patients who are recipients of Supplemental Security Income may count toward the utilization requirements for Supplemental Security Income recipients which are specified in (b)1 above.

ii. At the time of initial licensure of any residential health care bed approved in accordance with this chapter, the facility shall sign and subsequently maintain a written transfer agreement with either the Division of Mental Health Services (within the New Jersey Department of Human Services) or at least one county psychiatric hospital or designated psychiatric short-term care facility, for the purpose of complying with the percentage requirement specified in (b)2 above.]

[(c)] **(b)** A nursing home [or residential health care facility] that receives certificate of need approval for a change in [cost or] scope shall comply with either the applicable utilization percentages for [Supplemental Security Income recipients and] Medicare-to-Medicaid and Medicaid-eligible [patients] **residents** which were stated in the Commissioner's original certificate of need approval letter to that facility, or the utilization percentages which are outlined in this chapter, whichever percentages are higher.

[(d)] **(c)** A certificate of need applicant proposing a new or expanded facility, or a change in [cost or] scope to a previously approved project, or a transfer of ownership of an existing facility with previous certificate of need conditions, who can produce documentation that the utilization percentage requirements in this section will cause a financial hardship may request a review of the feasibility of those percentages, which may result in a finding by the Department that a lower percentage is required for financial feasibility.

8:33H-1.16 Cost-efficiency and financial feasibility

(a) Applicants for a Certificate of Need shall demonstrate the financial feasibility of their projects. This analysis should be based upon the projection of reasonable private pay and Medicaid charges, expenses of operation, and staffing patterns, relative to other facilities in the [health systems area] **planning region** in which the proposed project will be located.

(b) (No change.)

(c) Where projected construction and operating costs are considerably lower or higher than the average for the [health systems area] **planning region**, as determined by the Department, the applicant shall provide an explanation at the request of the Department indicating factors contributing to said projections. This request for an explanation shall not be construed as an opportunity to change cost projections. Information regarding the most recent available facility costs in the health systems areas may be obtained from the Department of Community Affairs' Health Care Plan Review Program.

(d) (No change.)

(e) Applicants shall provide evidence in their financial projections that income generated by operation of the facility will be sufficient to provide care to the percentage of Medicaid-eligible or indigent [patients] **residents** specified in the application, or in accordance with N.J.A.C. 8:33H-1.15 whichever is greater.

(f) – (g) (No change.)

(h) Applicants proposing to add long-term care beds in an existing facility or to add long-term care beds in the course of replacing an existing facility shall provide documentation that the added beds will improve the efficient operation of the facility, reducing unit costs of care per [patient] **resident**.

8:33H-1.17 Environmental and physical plant considerations

(a) (No change.)

(b) Prior to submitting a Certificate of Need application, applicants proposing specialized long-term care beds shall consult with the Department of

Community Affairs' Health Care Plan Review Program regarding the architectural design and construction of such projects. In addition to the standard construction requirements for nursing homes, the following shall be required:

1. – 2. (No change.)

3. Specialized care units for [patients] **residents** with severe behavior management problems shall provide easy access to a protected outdoor area, such as a courtyard, patio, or garden.

8:33H-1.19 Prioritization criteria and recommended features for the approval of nursing home projects

(a) (No change.)

(b) Preference shall be given to the Certificate of Need approval of those projects that receive the greatest number of points using the criteria enumerated below. Each criterion shall count for one point, except that the criteria at (b)1 and 2 below shall count for two points each. In this manner, the maximum possible score shall be 15. Criteria are as follows:

1. The applicant documents a commitment to occupy 55 percent or more of the facility's total long-term care bed complement with Medicaid-eligible [patients] **residents** within one year of licensure. This proportion shall include at least 45 percent occupancy of the total bed complement by direct-admission Medicaid-eligible [patients] **residents** and at least 10 percent occupancy by [patients] **residents** who convert from private pay status to Medicaid eligibility

during their stay in the facility. Applicants may propose to accept higher percentages of Medicaid [patients] **residents** than those stated herein, however, no greater priority shall be given to applicants for such a commitment;

2. The applicant demonstrates a commitment to admit and maintain Medicaid-eligible "heavy care" or acuity [patients] **residents** in at least 20 percent of the proposed new beds (that is, [patients] **residents** who do not require specialized care, as it is defined in N.J.A.C. 8:33H-1.2, but who routinely require more than the 2.5 hours per day minimum amount of nursing care required in N.J.A.C. 8:39). In order to meet this criterion, the applicant is required to provide documentation from area hospital discharge planners or other appropriate resources to show that there is a need of the magnitude that would warrant 20 percent of the proposed beds being dedicated for heavy care;

3. – 4. (No change.)

5. The facility will include a separate and distinct unit for young adult [patients] **residents**. The size of this unit should be proportionate to the county's need[, taking into consideration the projected need for placements for individuals age 20 to 64 in accordance with the placement methodology in N.J.A.C. 8:33H-1.4,] and the existence of other long-term care resources that are available for young adults in the area.

6. – 8. (No change.)

9. The project entails the conversion of excess acute care hospital bed capacity to long-term care, in accordance with the requirements in N.J.A.C. 8:33H-1.13[(i)] **(g)**;

10. – 11. (No change.)

12. Above and beyond meeting the requirements in N.J.A.C. 8:33H-1.14, the applicant has a track record for high quality [patient] **resident** care in nursing facilities owned or operated by the applicant in New Jersey, as demonstrated by compliance with five or more advisory standards contained in N.J.A.C. 8:39 at the time of the most recent annual licensing survey. Advisory standards which will be taken into consideration are: access to care, [patient] **resident** assessment and care plans, pharmacy, infection control and sanitation, [patient] **resident** activities, dietary services, medical services, nurse staffing, physical environment, and quality assurance. Substantial compliance refers to compliance with at least 65 percent of the components of each of the five advisory standards; and

13. The facility will promote not only a high quality of nursing and medical care but also a high quality of life for residents. Factors deemed to promote a high quality of life include, but are not limited to, the following:

i. Physical space inside the facility in excess of minimum construction requirements, designed for [patients] **residents** to meet privately with family and significant others;

ii. (No change.)

iii. Strategies to address the needs of [patients] **residents** with Alzheimer's Disease and related dementias, including, but not limited to, wandering tracks, behavior management programs, family support groups, and ongoing special activities.

(c) – (d) (No change.)

(e) In [Local Advisory Board] **planning** regions where there is a need for specialized long-term care beds, priority shall be given to the approval of certificate of need applications for projects which are in compliance with all applicable requirements of this chapter and which meet the greatest number of the following criteria:

1. The facility will be centrally located in a geographically accessible location which is conveniently reached by public and private transportation by residents of all parts of the [LAB] **planning** region;
2. (No change.)
3. The applicant documents a commitment to occupy 55 percent or more of the facility's specialized care bed complement with Medicaid-eligible [patients] **residents** within one year of licensure. This proportion shall include at least 45 percent occupancy by direct-admission Medicaid-eligible [patients] **residents** and at least 10 percent occupancy by [patients] **residents** who convert from private pay status to Medicaid eligibility during their stay in the facility. Applicants may propose to accept higher percentages of Medicaid [patients] **residents** than those stated herein, however, no greater priority shall be given to applicants for such a commitment.

8:33H-1.20 Relationship between licensure and certificate of need requirements

The provisions of N.J.A.C. 8:39, Licensing Standards for Long-Term Care Facilities[, N.J.A.C. 8:43, Manual of Standards for Licensure of Residential Health Care Facilities,] and N.J.A.C. 8:36, Standards for Licensure of Assisted Living Residences, Comprehensive Personal Care Homes and Assisted Living Programs[, and N.J.A.C. 8:43B, Standards for Licensure of Alternate Family Care Sponsor Agencies] are hereby incorporated by reference. Applicants receiving certificate of need approval under the provisions of this chapter shall comply with all applicable licensing requirements of N.J.A.C. 8:39[,], and 8:36[, 8:43, and 8:43B].